Ministry
of
Labour
Ontario

OCCUPATIONAL HEALTH AND SAFETY ACT

QUESTIONS AND ANSWERS

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INTRODUCTION

On January 1, 1991, amendments to the Occupational Health and Safety Act introduced by Bill 208 came into effect. The development and enactment of the Bill 208 amendments were accompanied by a large number of enquiries, both from within and outside the Ministry of Labour. Some of these enquiries raised interesting and complex issues. A committee was therefore established to examine these issues and make recommendations to senior Ministry officials on how they should be resolved. Representation on this committee included the line branches, advisory service and training unit of the former Occupational Health and Safety Division, the Legal Services Branch, and the Policy Division.

This report contains those issues with resolutions approved by the senior Ministry officials. Each issue is presented in a question and answer format, together with relevant background information that provides the rationale for resolving the issue. While it is not a legal document it should be useful in assisting Ministry inspectors and others in interpreting the Act. Ultimate interpretations of the Act are, of course, provided by the courts.

NOTE:

The Revised Statutes of Ontario (R.S.O.) 1990 came into effect on December 31st, 1991. This decennial consolidation occasioned a major renumbering of the sections, subsections and clauses of the OHS Act (please see the Section Concordance on page iii). This publication was amended in June of 1992 to reflect those changes.

OCCUPATIONAL HEALTH AND SAFETY ACT
SECTION CONCORDANCE

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SECTION 1

What will be the impact on tree farms and nurseries of the expanded definition of logging? Will they be inspected and will their WCB assessments rise?

BACKGROUND

Bill 208 expanded the definition of logging to include "the practice of silviculture". The purpose of this change was to give the Ministry the right to inspect reforestation/replanting projects that are part of a logging operation.

Current Ministry policy is that silviculture means "the growing and tending of trees for the purposes of forestry". This means that if a tree farm is raising seedlings intended for use in reforestation projects it is engaged in the practice of silviculture, and is therefore part of a logging operation, and will be covered by the Act.

A tree farm raising seedlings for purposes other than forestry, such as for use in landscaping, is not engaged in silviculture and is not part of a logging operation. In the past, Ministry practice has been to consider that tree nurseries are farming operations and, as such, exempt from the Act.

WCB assessment rates for logging operations are significantly higher than for tree farms.

ANSWER

The expanded definition of logging will have the effect of clarifying that tree nurseries growing seedlings for the purposes of reforestation are covered under the Act. It is not appropriate to comment on the impact that this change will have on WCB assessment rates because Bill 208 and the Workers' Compensation Act are different legislative schemes.

SECTION 8

Is it permissible for a health and safety representative to report his or her concerns to a manager who is a member of the same union as the workers?

BACKGROUND

The employer in question has about 400 small outlets in Ontario that are managed by union personnel who have the authority to hire, fire, and discipline workers.

Most of the outlets have five or fewer workers and so there is no requirement under the Act for a health and safety representative. The employer nevertheless wishes to have one representative at each outlet, who would report to the manager at the outlet. The union wants each representative to report to a district manager who is not a member of the union and is not located at the workplace.

Health and safety representatives in workplaces with five or fewer workers would have no standing under the Act, unless a Minister's order were in effect. Employers at such workplaces would therefore be free to establish whatever reporting relationship they wanted.

ANSWER

The union status of the manager is irrelevant. It is the responsibility of the workplace parties to establish the reporting relationship of the health and safety representative. What is important is the establishment of a line of communication to company management so that concerns in the workplace can be effectively dealt with. In most cases this would best be achieved where these concerns are addressed by on–site personnel.

SECTIONS 8 AND 9

Frequency Of Workplace Inspections

Who decides that monthly workplace inspections are not practical?

BACKGROUND

Subsections 8(7) and 9(27) both state that if it is not practical to inspect the workplace at least once a month the physical condition of the workplace shall be inspected at least once a year, with at least a part of the workplace being inspected in each month. The annual inspection must be conducted in accordance with a schedule agreed to by the employer or constructor and health and safety representative (subsection 8(8)) or the health and safety committee (subsection 9(28)).

What is practical will depend on the size and complexity of the workplace and the number of individuals carrying out the inspection. Some health and safety committees have designated workers to assist in the inspection. Justification for this approach can be found in subsection 9(29), which requires workers to provide the committee member "with such information and assistance as the member may require for the purpose of carrying out an inspection of the work place". The delegation of inspection responsibilities to designated workers has made monthly inspections practical in even the largest workplaces. It is important, however, that this approach has the support of the employer because the designated worker would not have the powers of a committee member under the Act.

For some workplaces there is no getting around the fact that monthly inspections are impractical. Two examples are large mines and school boards, where the "workplace" may comprise more than 100 school buildings. But most Ontario workplaces can and do have monthly inspections. The provisions of subsections 8(7) and 9(27) should not be interpreted as allowing a relaxation of current practice. If a workplace is inspected monthly then monthly inspections have been shown practical.

ANSWER

The joint health and safety committee or the health and safety representative in consultation with the employer or constructor decide whether monthly workplace inspections are practical. Where there is no agreement, the Ministry may be contacted to provide assistance in resolving a dispute. The Ministry believes that monthly inspections are practical in most workplaces.

SECTIONS 8 AND 9

Worker Count For Committees And Representatives

A company operates a chain of convenience stores. To comply with the Act, each store must have a worker health and safety representative. This results in the company having more than 100 health and safety representatives, a situation the company finds unworkable. Can the province be divided into four geographical areas with one representative for each area reporting to management?

BACKGROUND

To be effective, a health and safety representative needs easy access to the workplace. This would not be the case if the representative were responsible for a quarter of the province.

An alternate arrangement may be considered under subsection 9(3), which provides for the establishment of joint health and safety committees by ministerial order.

ANSWER

Individual retail outlets must fulfill the requirements of sections 8 and 9.

Worker Count For Committees And Representatives (cont'd)

Who is counted for the purposes of determining whether or not a committee or representative is needed at a workplace? Are the rules different for construction projects and industrial workplaces?

BACKGROUND

The question of who is to be counted as a worker for the purpose of determining the requirements for a health and safety committee or representative does not arise anew with Bill 208. Supervisors and management staff have always been counted. An owner who works at the workplace is counted.

The counting of part–time staff is less clear because the Act refers to workers that are "regularly employed". Part–time staff can be "regularly employed" on a daily, weekly, monthly or annual (i.e., seasonal) basis. Permanent part–time staff is clearly "regularly employed". A determination of the regularity of non–permanent daily, weekly or monthly part–time work should also be straightforward. In most cases seasonal work is not considered regular employment but there are exceptions, such as bicycle repair, operating a ski–lift and other weather–dependent or tourism activities. For seasonal workers to be included in the count for committees their period of employment must recur in a predictable manner and exceed three months.

Regularly employed contract staff, such as janitors and office temps, count as workers, but since their employer may not be the owner of the workplace, how these workers are counted will depend on the terms of their employment. If they are under the direct supervision of and report to the employer at the workplace they should be included in both the count for the workplace committee and for their employer's central workplace. Contract workers who work independently of the employer at the workplace would only be included in the count for the committee at their employer's central workplace.

Some workers are employed in what may be termed "dispersed workplaces". Some examples are travelling salespeople, school bus drivers, nurses providing homecare, and cleaning staff for homes and office buildings. These workers may spend little or no time at their central workplace. In some cases (school bus drivers), there may not even be a central workplace. Nevertheless, these workers must be included in the committee count for their home base. It should be recognized, however, that it may be difficult for a committee to function in a dispersed workplace. In some cases (e.g., travelling salespeople), it may not be necessary for the committee to inspect the dispersed workplace; in other cases (homecare nurses) it may not be possible.

Worker Count For Committees And Representatives (cont'd)

ANSWER

The following workers must be included in the count for determining health and safety representative and committee requirements:

- supervisors
- management staff
- an owner/worker of a small business
- permanent part-time staff
- non-permanent, regularly employed part-time staff
- permanent or regularly employed contract staff
- workers in a dispersed workplace (e.g., travelling sales people, homecare nurses, school bus drivers, and household and office building cleaners)
- seasonal workers with a predictably recurring period of employment that exceeds three months

On construction projects the number of workers present at one time is counted. At an industrial workplace the number of regularly filled positions (i.e., the number of workers on the payroll) is counted; this will usually be more than the number present at any one time.

Worker Count For Committees And Representatives (cont'd)

What are an employer's responsibilities regarding employees of a contractor who perform ongoing maintenance work at the employer's workplace? Assume there are more than 20 workers. Should they be represented on the employer's committee? Should the employer ensure that they establish their own committee?

BACKGROUND

It is the responsibility of the employer to "cause a joint health and safety committee to be established and maintained at the work place ..." (subsection 9(4) of the Act). The Act defines "employer" as "a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor ...". Therefore either the contractor who provides workers who have ongoing long–term employment at a workplace or the employer at the workplace could be interpreted to be the employer of the contract workers for the purposes of the Act. If the contract worker has a direct reporting relationship with the workplace employer, the workplace employer would be regarded as the contract worker's employer.

Work performed by contract workers at an industrial site is usually quite distinct from the work of non–contract workers and is performed independently of the employer at the workplace. This contrasts with the case of "temporary" office staff supplied by an agency. Because the agency's workers would be doing essentially the same work as others in the office, their health and safety concerns should be adequately dealt with by the existing workplace committee. For the industrial maintenance contract workers to have their concerns addressed, they should either be represented on the workplace committee or have their own committee.

The workplace employer would not be considered the employer of the industrial maintenance contract workers and therefore would not be responsible for establishing a committee for these workers. This employer also has no obligation to ensure that concerns of these workers are addressed by the workplace committee. The contractor is responsible for establishing a committee for the contract workers. This committee could be established at the contractor's central workplace and represent all the contractor's workers at various industrial work sites, or the contractor could establish a contractor workers' committee at each industrial work site.

Worker Count For Committees And Representatives (cont'd)

ANSWER

Where the contract worker does essentially the same work as other workers at the workplace and reports directly to the employer at the workplace, the employer at the workplace should ensure that the contract worker is represented on the workplace committee. Otherwise, it is the responsibility of the employer of the contract workers (the contractor) to establish a health and safety committee for the contract workers.

SECTION 9

Health And Safety Committee Minutes

How long do minutes of a health and safety committee meeting have to be kept?

BACKGROUND

Subsection 9(22) of the Act states:

> A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector.

In order to comply with subsection 9(22), all minutes for committee meetings held since the workplace was last visited by a Ministry inspector would have to be kept until the next Ministry inspection.

Some workplaces may be visited several times a year. In such workplaces committee minutes should be kept for at least one year.

ANSWER

Minutes of health and safety committee meetings must be kept for all meetings held since the last visit by a Ministry inspector and should be kept for a period of at least one year.

SECTION 9

Inspection Of Dispersed Workplaces

How would a committee representing a "dispersed" workforce inspect the places where the workers actually work, e.g., health care workers working long term in private homes, or other workers working long term in a workplace or part of a workplace that is not normally inspected?

BACKGROUND

Examples of workers employed in dispersed workplaces are travelling salespeople, school bus drivers, nurses providing homecare, and cleaning staff for homes and office buildings. These workers are included in the committee count for their central workplace, but it is recognized that it may be difficult for a committee to function in a dispersed workplace.

Under subsection 9(27) of the Act, a designated member of the committee must inspect the physical condition of the workplace at least once a month or, if that is impractical, once a year, with part of the workplace being inspected each month. For some dispersed workplaces, such as all the office buildings under the care of an office cleaning service, even annual inspections may be impractical. For others, it may not be feasible to inspect at all. Where a private home is the workplace, the worker committee member would have no right of access.

ANSWER

The worker committee member designated to inspect the workplace should attempt to fulfill the inspection requirements of the Act even in dispersed workplaces. Where there is no right of access, the member should seek permission to enter the workplace. It is recognized that there may be situations where a workplace inspection will not be feasible.

SECTION 9

Powers Of A Committee Member

How does a committee make decisions: by majority vote or consensus? When a committee cannot agree, can an individual member of the committee exercise any of the committee's powers? Does an individual committee member have the same powers as a health and safety representative?

BACKGROUND

The powers of a joint health and safety committee are listed in subsection 9(18) of the Act. A health and safety representative has similar powers spelled out in subsections 8(10) and 8(11). The Act does not specify independent powers for a committee member. A committee member is not equivalent to and does not have the powers of a health and safety representative.

There is an important consequence that follows from this distinction. In a workplace where a committee cannot agree on a recommendation, a worker member of the committee cannot make the recommendation directly to the employer and expect to receive a response. This is in contrast to the situation where no committee is required and the health and safety representative can make a recommendation directly to the employer and receive a written response under subsection 8(12). The establishment of a committee in some workplaces could therefore lessen the workers' opportunities to have health and safety issues dealt with.

A joint health and safety committee is free to establish its own decision-making procedure. It could be by consensus or majority vote. A committee can also delegate some of its powers to an individual committee member. In situations where there appears to be a breakdown in the internal responsibility system because issues brought forward by worker members are being blocked by management members, the worker co-chair can proceed independently to present the issue to the employer, and should receive a response from the employer within a reasonable period of time. Where no response is received, the Ministry can order the employer to respond.

Powers Of A Committee Member (cont'd)

ANSWER

It is up to each committee to establish its own decision-making procedure. While the Act does not assign powers to a committee member that are independent of the committee, the committee is free to delegate to a member any of its powers that it deems appropriate. Where a committee is routinely prevented from exercising its powers by the failure of management and worker members to agree, the worker co-chair can proceed independently to present an issue to the employer and the Ministry would expect the employer to respond within a reasonable period of time.

SECTION 9

Time-frame For Action By Committee

How quickly must a committee act when informed about a potentially hazardous situation?

BACKGROUND

Subsection 9(30) reads as follows:

> The member shall inform the committee of situations that may be a source of danger or hazard to workers, and the committee shall consider such information within a *reasonable period of time*.

A committee should be prepared to consider situations which *may* be hazardous at its next scheduled meeting if possible. Since committees are required to meet at least once every three months (subsection 9(33)), the reasonable time period referred to in subsection 9(30) would be less than three months.

A worker also has a duty, under clause 28(1)(*d*), to report any hazard to the employer or supervisor. Other avenues for addressing hazardous situations in the workplace are work refusals and work stoppages. In the event of a serious or imminent hazard, these avenues may be preferable. The health and safety committee does not provide an appropriate means for dealing with emergencies.

ANSWER

When informed of a potentially hazardous situation, a committee should consider the situation at its next scheduled meeting if at all possible. A situation that is clearly hazardous must be brought to the immediate attention of the employer or supervisor, in accordance with clause 28(1)(*d*).

SECTION 9

Worker Trades Committee

Do members of a worker trades committee for a project need to be employed on the project in the trades they represent?

BACKGROUND

A worker trades committee is required on projects with 50 or more workers that is expected to last more than three months. It is to be "established" by the joint health and safety committee at the project. Worker members of the joint health and safety committee must be selected from workers employed at the project. Since the worker trades committee must work closely with the joint committee, it is reasonable to expect that the trades committee members would also be selected from the project's workers. This is not stated explicitly in the Act, however.

The Act has two requirements for worker trades committee members:

- they shall represent workers employed in each of the trades at the work place (subsection 10(2))
- they shall be selected by the workers employed in the trades the members are to represent or, if a trade union represents the workers, by the trade union (subsection 10(3)).

Membership on a project's worker trades committee therefore does not appear to be restricted to workers actually employed at the project.

While there is nothing to prevent the appointment of individuals from outside a project's workforce to a worker trades committee, it cannot be recommended. Experience with trades committees has shown that they are more likely to be effective in communicating the health and safety concerns of workers to the joint health and safety committee if their members are employed as workers on the project.

ANSWER

Although it is not an explicit requirement of the Act, members of a worker trades committee should be employed on the project in the trades they represent. The main function of the trades committee is to inform the health and safety committee of workers' health and safety concerns about conditions in the project. The trades committee is more likely to be effective in carrying out this function if its members are actually employed at the project.

SECTION 9

Power To Investigate Accidents

The members of a joint health and safety committee who represent workers have the right to designate one or more of their members to "investigate" cases where a worker is either killed or critically injured (subsection 9(31)). What does "investigate" mean? Does it include the right to interview other workers?

BACKGROUND

Subsection 9(31) states that the members of a committee who represent workers shall designate one or more members to investigate fatal or critical injury accidents, that one of those members may inspect the accident scene, and any machine, device or thing, and report the findings to a Director and the committee.

This may be interpreted as meaning that committee members may be appointed to investigate accidents, and that as part of an investigation, a member may inspect the scene. This could include a search or examination of the physical evidence and the making of enquiries as to how and why the accident occurred.

It is important to note, however, that under subsection 51(2) it is a contravention of the Act to disturb the accident scene without the permission of an inspector. Until an inspector arrives at the scene, the role of the workplace investigator should therefore be restricted to securing the accident site and preliminary questioning of witnesses.

The difference between enquiries made by a designated member of a committee and those made by an inspector should also be noted. Under the Act, workers are required to assist an inspector conducting an investigation and would therefore be expected to answer questions. There is no corresponding provision requiring a person to disclose information to a designated member of the committee who is conducting an investigation; such disclosure would be voluntary. The reason for the difference is that inspectors are bound by the confidentiality requirements of the Act, whereas committee members are not. Workers wishing to speak to the committee member conducting an investigation should nevertheless be given every opportunity to do so.

It would be reasonable to extend the right to investigate a fatal or critical injury accident to health and safety representatives, even though this is not specified clearly in the Act – subsection 8(14) empowers a representative to "inspect" the site.

Power To Investigate Accidents (cont'd)

ANSWER

Worker representatives on a joint health and safety committee should designate one or more of themselves to investigate fatal or critical injury accidents in the workplace. The designated members, or a health and safety representative where there is no committee, may interview witnesses to the accident, or others who may have information as to how or why the accident occurred, if those persons are willing to be interviewed. No person is required to give information to a designated member or to a health and safety representative. A designated member or a health and safety representative may also inspect, without disturbing, the site of the accident, and shall report the findings to a Director and the committee.

SECTION 9

Presence At Radiation Testing

Subsection 11(3) gives a health and safety representative or a designated committee member the right to be present at the beginning of industrial hygiene testing. Does this include testing or monitoring for radiation?

BACKGROUND

Radiation testing in a workplace under provincial jurisdiction is subject to the provision set out in subsection 11(3). This includes testing of x-ray equipment, and testing for radon progeny in non-uranium mines. Testing in uranium mines will be covered when the Atomic Energy Control Board adds Bill 208 to Schedule III of the Uranium Mines (Ontario) Occupational Health and Safety Regulations under the Atomic Energy Control Act.

ANSWER

Radiation testing in a workplace under provincial jurisdiction is subject to the provision set out in subsection 11(3). This includes testing of x-ray equipment, and testing for radon progeny in non-uranium mines.

In order for this provision to apply in uranium mines, the Atomic Energy Control Board must adopt the provisions of Bill 208 by amending the regulations under the Atomic Energy Control Act. The Ministry has requested that this be done in the near future.

SECTION 9

Routine Testing

Section 9(18)(f) gives the joint committee the right to be consulted about any workplace tests related to occupational health and safety, and to have a designated member present at the beginning of testing. Is the section referring to regular monitoring, for example, tests conducted on a daily basis?

BACKGROUND

Section 9(18)(f) states that a designated worker member may be present at the beginning of testing "if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid". A member could have reason to believe that his or her presence is required even for testing that is routine. It is recognized, however, that this provision could be abused; an inspector would be expected to resolve ensuing disputes.

ANSWER

In the case of routine testing, where the testing protocols and procedures have been established and agreed to in advance, there will normally be no reason for the designated member to attend on a daily basis. However if the member has some grounds to "believe" that his or her presence is necessary on a particular occasion, then the member does have that right.

SECTION 25

Occupational Health And Safety Report

Is an employer required to provide the health and safety committee or representative with reports prepared prior to the Act coming into force? Do the reports have to be posted?

BACKGROUND

Clause 25(2)(1) requires an employer to provide the committee or representative with the results of a report respecting occupational health and safety *that is in the employer's possession* and, if the report is in writing, a copy of the portions of the report that concern occupational health and safety.

ANSWER

Yes, an employer is required to provide the health and safety committee or representative with reports prepared prior to the Act coming into force. The reports do not have to be posted.

Medical Examinations (cont'd)

ANSWER

Medical examinations and tests required under the following regulations are considered to be safety-related for the purposes of clause 26(1)(i):

- section 34 of the Diving Regulation;
- section 250 of the Regulations for Construction Projects (working in compressed air);
- section 230 of the Regulations for Mines and Mining Plants (hoist operator);
- section 187 of the Regulations for Mines and Mining Plants (production crane operator); and
- section 16 of the Regulations for Mines and Mining Plants (mine rescue personnel).

Medical examinations required under designated substance regulations (DSRs), or the Regulation respecting Control of Exposure to Biological or Chemical Agents, O.Reg. 654/86, are considered to be medical surveillance and are not compulsory.

Medical Examinations (cont'd)

Can an employer compel a worker to have a pre-placement medical examination?

BACKGROUND

An employer has two duties under the Act that relate to medical examinations. An employer must establish a medical surveillance program as prescribed (clause 26(1)(h)) and must provide for safety-related medical examinations and tests for workers as prescribed (clause 26(1)(i)). If a pre-placement examination is part of a prescribed medical surveillance program then, under subsection 28(3), a worker is not required to participate without giving consent. But where medical examinations have been prescribed as a prerequisite for employment, then under clause 26(1)(j), an employer must only permit a worker to work or be in a workplace if the worker has undergone the prescribed medical examinations and tests.

Any requirements by an employer for a pre-placement medical other than the above fall outside the Act. A worker who refused to have a pre-placement medical could be denied the new position as a result. Such a worker might have grounds for a grievance against the employer but would have no recourse under the Act.

ANSWER

The Act provides for pre-placement safety-related medical examinations in prescribed situations. An employer's requirement for pre-placement medical examinations in other situations would not be an issue under the Act.

SECTION 32

Who are the officers and directors of a municipal corporation?

BACKGROUND

Section 32 of the Act requires every director and every officer of a corporation to ensure that the corporation complies with the Act and regulations, orders and requirements of an inspector or director of the Ministry, or an order of the Minister. Legislation establishing municipal corporations does not clearly identify who these individuals are. Officials of the Ministry of Municipal Affairs have advised that the statutory officers of a municipal corporation who are likely to be construed by a court as officers for the purposes of section 32 are the head of council, the chief administrative officer, the clerk, treasurer, engineer and possibly members of council. Case law arising from the Municipal Act suggests that commissioners and department directors would not be considered officers under section 32.

ANSWER

In general, it is not possible to establish unequivocally who the officers and directors of a municipal corporation are. Officials of the Ministry of Municipal Affairs, who have looked into case law arising from the Municipal Act, suggest that they would include the head of council, the chief administrative officer, the clerk, treasurer, engineer and possibly members of council.

SECTION 51

Notification Of Critical Injuries

Are the notification requirements for workplace deaths or critical injuries and injury-causing accidents no longer in force?

BACKGROUND

Section 51 of the Act requires an employer or constructor to notify immediately an inspector, the health and safety representative or committee, and trade union, if any, when an individual is killed or critically injured at the workplace. Section 52 spells out similar requirements for an injury-causing accident, explosion or fire. A written report must also be sent to a Director for both types of injury. The details to be included in the written report are spelled out in sections 5, 10, and 20, respectively, of the regulations for industrial establishments, for construction projects, and for mines and mining plants.

ANSWER

The notification requirements for workplace deaths or critical injuries and accidents remain in force.

SECTION 66

Definition Of Corporation

For the purposes of section 66, what is a "corporation"? Does it include a non-profit organisation?

BACKGROUND

Section 66 specifies a maximum fine of $500,000 for a corporation convicted of an offence under the Act or regulations.

There are several types of corporations. What they all have in common is that they are legal personages with the legal existence, rights and duties of a distinct person separate and apart from the individuals who create them. A corporation is different from a sole proprietorship (one person carrying out business without being incorporated), a partnership (limited or general) or an association that has not filed for corporate status. It is not the use of the word "corporation" which makes something a corporation nor does the use of a name such as "association" by a corporation remove its corporate status.

ANSWER

There are six types of corporations:

1. Corporations incorporated by Royal Charter
2. Corporations incorporated by Letters Patent
3. Corporations incorporated by special incorporating statutes
4. Corporations incorporated under the Canada Business Corporations Act
5. Corporations incorporated under any of the provincial corporations acts
6. Municipal or other body politic, political/geographical corporations incorporated by special statute.

A non-profit organisation is a corporation if incorporated by any of the above methods.

JURISDICTION

Are security guards employed under contract to the RCMP to provide security at an airport under federal or provincial jurisdiction?

ANSWER

Bill 208 does not address questions of jurisdiction. Federal and provincial jurisdictions are statutorily defined by sections 91 and 92 of the Constitution Act.

In the case under consideration it is not possible to make a determination without further information. The RCMP and the airport are clearly under federal jurisdiction. The security guards would also be under federal jurisdiction if they were engaged in providing a *vital*, *essential* or *integral* service to a federal undertaking that is *necessary to its effective operation*.

Some security functions at an airport would fulfill these criteria; others would not. The security guards who check passengers for weapons prior to boarding a plane would be under federal jurisdiction. Those responsible for the security of cars in a carpark or the general public in waiting areas would be under provincial jurisdiction. Without knowing more about what the security guards in question are actually doing, it is not possible to determine whose jurisdiction they are in.